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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Case No. 3:25-cv-03698-SI

NOTICE

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1 Defendants respectfully provide this Notice to inform the Court about both Defendants'
2 discovery responses and Defendants' position regarding the current status of discovery. Earlier
3 today, Defendants served responses and objections to Plaintiffs' Request for Production of
4 Documents, ECF NO. 178-1 Ex. A (RFPs). As to RFPs 2 and 3, subject to and without waiving
5 their stated objections, Defendants produced all documents located after a reasonable search that
6 are responsive to those RFPs (all responsive documents are maintained by the Office of Personnel
7 Management); Defendants did not withhold any documents responsive to these two RFPs, either
8 on the basis of privilege or on any other ground.

9 As to RFP 1, subject to and without waiving their stated objections, Defendants will
10 produce those portions of any responsive documents located after a reasonable search over which
11 Defendants are not claiming a privilege. Defendants anticipate making an initial production of
12 such records today. Defendants have not yet completed processing of all responsive and non-
13 privileged records but are working diligently to do so as expeditiously as possible, and will make
14 rolling productions of responsive records beginning August 11, 2025 (i.e., today). In addition,
15 Defendants intend to produce a privilege log in a format consistent with the Federal Rules of Civil
16 Procedure within 30 days of today.

17 Although Plaintiffs' RFPs purported to direct Defendants to provide all responsive
18 documents by August 11, Defendants are permitted to object to this instruction and they have done
19 so. *See* Fed. R. Civ. P. 34(b)(2)(B). Likewise, Defendants are permitted to object to Plaintiffs'
20 purported directive that a privilege log be supplied by today, and they have also done so, while
21 providing a reasonable later date by which they will in fact provide a privilege log. All of this is
22 consistent with both the Federal Rules of Civil Procedure and ordinary discovery practice.

23 Defendants nonetheless file this Notice now because they anticipate that Plaintiffs will in
24 fact object to these responses and seek relief from the Court. Defendants will file an appropriate
25 response to any such motion if and when it is filed but, to be clear, Defendants' position does not
26 reflect noncompliance with any order of this Court. On July 25, 2025, the Court denied
27 Defendants' motion to quash, *see* ECF No. 228—i.e., it denied Defendants' July 15, 2025 motion
28 which requested that the Court “reliev[e] Defendants of any obligation to respond to the RFPs” at

1 all. ECF No. 210 at 1. Since the Court denied Defendants’ motion to quash, Defendants are not
2 relieved of their obligation under the Federal Rules of Civil Procedure *to respond* to the RFPs. *See*
3 ECF No. 228 at 2 (“The Court declines to alter the current discovery response deadline of August
4 11, 2025.”). And although the Court repeated its prior conclusion, with which Defendants disagree,
5 that any privilege, “if it exists at all,” is overcome by Plaintiffs’ need for the requested materials,
6 *id.* at 2-3, the Court’s denial of the motion also anticipated that Defendants would withhold
7 responsive documents that they believe are privileged, and did not prohibit them from doing so.
8 *See id.* at 5 (“To the extent defendants withhold relevant documents that they assert are privileged,
9 defendants shall provide plaintiffs with a privilege log for any specific assertions.”).

10 Plaintiffs may argue that Defendants have misunderstood the Court’s intentions as reflected
11 in that order; for example, Plaintiffs may argue that in its July 25 denial of Defendants’ motion to
12 quash, the Court *did intend* (i) to preclude Defendants’ ability to withhold records they deem
13 privileged, (ii) to prevent Defendants from objecting to Plaintiffs’ purported directive to *produce*
14 all responsive non-privileged documents by today, (iii) to object to the purported directive to
15 produce a completed privilege log by today, or (iv) to otherwise cut off Defendants’ ability to
16 advance reasonable objections permitted by the Federal Rules of Civil Procedure. Defendants
17 would disagree with any such reading of the Court’s July 25 order, since it denied a motion to
18 quash, and did not compel production or grant other relief. Defendants could not have sought a
19 stay or appellate relief of the Court’s July 25 Order, since a denial of a motion to quash does not
20 do anything other than decline to relieve Defendants of their obligations to respond to Plaintiffs’
21 RFPs—an obligation imposed by the Federal Rules of Civil Procedure, not any prior order from
22 this Court.

23 To be sure, if Plaintiffs seek and the Court grants further relief—in particular, if the Court
24 issues an order that actually requires Defendants to produce privileged material—Defendants may
25 seek relief from any such order from the Ninth Circuit. And of course, if Defendants are unable to
26 secure relief from a future order from this Court or a higher court, Defendants recognize their
27 obligation to comply with any such order. But no such order has yet been issued. For the reasons
28 previously explained, Defendants’ responses and objections to the RFPs are consistent with this

1 Court's prior orders and all applicable legal requirements.

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3 Dated: August 11, 2025

Respectfully submitted,

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